

David F. Sugerman, OSB No: 86298  
DAVID F. SUGERMAN ATTORNEY, PC  
707 SW Washington St., Suite 600  
Portland, Oregon 97205  
Phone: (503) 228-6474  
Fax: (503) 228-2556  
Email: [david@davidsugerman.com](mailto:david@davidsugerman.com)

Michael Patrick Doyle, *Pro Hac Vice*  
Jeffrey L. Raizner, *Pro Hac Vice*  
Patrick M. Dennis, *Pro Hac Vice*  
DOYLE RAIZNER, LLP  
1221 McKinney Street  
Suite 4100  
Houston, Texas 77010  
Phone: (713) 571-1146  
Fax: (713) 571-1148  
Email: [mdoyle@doyleraizner.com](mailto:mdoyle@doyleraizner.com)  
[jraizner@doyleraizner.com](mailto:jraizner@doyleraizner.com)  
[pdennis@doyleraizner.com](mailto:pdennis@doyleraizner.com)

Gabriel A. Hawkins, *Pro Hac Vice*  
COHEN & MALAD, LLP  
One Indiana Square  
Suite 1400  
Indianapolis, Indiana 46204  
Phone: (317) 636-6481  
Fax: (317) 636-2593  
Email: [ghawkins@cohenandmalad.com](mailto:ghawkins@cohenandmalad.com)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

Rocky Bixby, *et al.*,

Plaintiffs,

Case No. 3:09-cv-632-PK

v.

Plaintiffs' Motion to Compel and for  
Sanctions

KBR, Inc., *et al.*,

Defendants.

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, LR 37-1, as well as this Court's inherent authority, plaintiffs move to compel discovery and to impose the sanctions upon Defendants. Pursuant to LR 7-1(a), the parties made a good-faith effort to resolve the dispute through a telephone conference. The parties have been unable to do so.

**Discovery Responses at Issue:**

**Request No. 12:** The documents identifying when you first became aware that toxic substances, including sodium dichromate, were present at the Plant.

**Request No. 20:** The documents exchanged with government agencies or officials of . . . the United States . . . or the United Nations . . . regarding the Plant, Project RIO, and/or the exposure of individuals to toxic substances.

**Interrogatory No. 7:** What documents (including e-mails) directly relating to the Incident in Question (record complaints/incidents, potential safety hazards, inspections, [sic] of the site of the Incident in Question) have been destroyed or discarded?

**Interrogatory No. 13:** Please identify any . . . studies . . . of toxic substances, including zinc sulfate, selenium, and sodium dichromate, in the . . . water at the Plant.

**Interrogatory No. 19:** Please document all communications between any of the above-captioned Defendants and the Department of the Army . . . regarding the above-captioned litigation or the incident in question.

**Depositions of KBR and Third Party Witnesses:** The cost and necessity of depositions being completed given the concealment of the KBR 2002 Assessment identifying, among other relevant information, the annual dissemination of over 8,000,000 pounds of sodium dichromate at Qarmat Ali

**Sanctions Requested:**

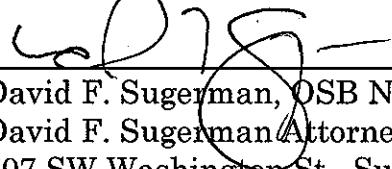
For failing to identify and/or disclose and the KBR 2002 Assessment and associated documents and taking advantage of this non-disclosure by maintaining positions inconsistent with the undisclosed discovery, plaintiffs seek the following sanctions:

- Require Defendants to identify all individuals—including attorneys—who had knowledge of the KBR 2002 Assessment within ten days; permit Plaintiffs to depose the identified individuals within thirty days; issue an award of attorney's fees and expenses for all costs associated with Defendants' failure to produce the KBR 2002 Assessment; inform the jury of Defendants' failure to disclose the KBR 2002 Assessment; any additional remedy deemed appropriate by this Court; revoke Defendants' attorney-client privilege as it relates to discovery; and set a hearing at the conclusion of the above-captioned depositions to determine the appropriateness of any additional sanctions

In support of their Motion, Plaintiffs incorporate their Memorandum of Law in Support of Plaintiffs' Motion for Sanctions and the Declaration of Gabriel Hawkins with accompanying exhibits.

Respectfully submitted,

Dated this 4<sup>th</sup> day of April 2012

  
\_\_\_\_\_  
David F. Sugerman, OSB No: 86298  
David F. Sugerman Attorney, PC  
707 SW Washington St., Suite 600  
Portland, Oregon 97205  
Phone: (503) 228-6474  
Fax: (503) 228-2556  
Email: [david@davidsugerman.com](mailto:david@davidsugerman.com)